Supreme Court, U.S.
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No. 85-1740

In The

Supreme Court of the United States

October Term, 1985

RICHARD A. KANANEN
MARILYN T. KANANEN

Petitioners,

vs.

SUN BANK OKEECHOBEE F/K/A
COMMERCIAL BANK OKEECHOBEE, FLORIDA
SUN BANK N.A.
SUN BANK, INC.

Respondent.

ON WRIT OF CERTIORARI
TO SUPREME COURT STATE OF FLORIDA
FOURTH DISTRICT COURT OF APPEAL;
STATE OF FLORIDA

REPLY BRIEF OF PETITIONERS

Richard Kananen
Marilyn Kananen
Attorney's pro-se
7611 Alachua Street
Orlando, Florida 32822
(305) 281-0594

COMET PRESS LAW BRIEFS (305) 273-8867

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RESPONDENTS BRIEF IN OPPOSITION TO PETITION SHOULD BE STRICKEN

On the cover of the brief in opposition the respondents have deleted two of the respondents and the Fourth District Court of Appeal. Therefore, the brief does not address itself to the case as docketed, and does not conform to the rules of this Court and should be stricken.

RESPONDENTS REFUSE TO RELATE TO THE FACTS TRUTHFULLY

Attorney for respondent as retained by Sun Bank N.A., and Sun Bank, Inc. and acting as their attorney a motion to dismiss petitioners counterclaim as entered into the Nineteenth Circuit. All subsequent pleadings by both sides have named Sun Bank N.A., and Sun Bank, Inc. as parties to the action. The promissory note and affidavits pertaining to summary judgment (R40) were submitted to the Court five hours after the hearing for summary judgment, Petitioners were not afforded the opportunity to refute them at summary judgment. However, subsequently the promissory note was determined to be a forgery. Summary judgment was issued solely on the allegation of a late payment September, 1983, when Petitioner Richard Kananen was scheduled for open heart surgery and was incidentally the fortieth payment. This court has the record from the Supreme Court of State of Florida. It can be readily seen that plaintiff's pleas to the court on their constitutional guarantees were being violated, and Motion Error compiled with F.R.A.P. in that in the body it states it may be treated as a writ of mandamus conveying upon the Supreme Court State of Florida original jurisdiction.

Respondents relied upon 1.150 F.R.C.P. to convey jurisdiction of summary judgment in the nineteenth circuit. However, 1.150 F.R.C.P. is sham pleadings. RESPONDENTS LABELED THEIR OWN MOTION CORRECTLY.

RESPONDENT MISCONCEIVES THE REQUIREMENTS OF THE MANDATES OF THE CONSTITUTIONAL AMENDMENTS QUOTED

Apparently respondent believes that the petitioners are some how excluded from the protection and guarantees of the constitution.

RESPONDENT MISCONCEIVES THE STATE REQUIREMENTS 1.510 F.R.C.P.

Prevailing law and its interpretation is clear. Any material factual issue in dispute precludes issuance of summary judgment.

RESPONDENT MISCONCEIVES UNIFORM COMMERCIAL CODE

Respondent can only recover on an authentic promissory note. Forgeries clearly preclude any hope of recovery.

RESPONDENT MISCONCEIVES WHAT CONSTITUTES MATERIAL FACTUAL ISSUE

The existence of the cancelled checks for July and August, 1983, and the fact that the respondents cannot produce an authentic promissory note and has only submitted forgeries are clearly material factual issues in dispute.

RESPONDENT MISCONCEIVES OWN CITATION

In Port of Palm Beach District v. Goethals, 104 F 2d 706 (5th Cir. 1939): the court clearly states in note 14

> "A summary judgment in a case at law which a jury has been demanded should not be granted unless the truth is clear."

RESPONDENT MISCONCEIVES WHICH AMENDMENT IS TRIAL BY JURY

This is covered under the VII Amendment to the Constitution of the United States of America.

RESPONDENT MISCONCEIVES THE ORDER OF THE FOURTH DISTRICT COURT OF APPEAL

By the order of the Fourth District Court of Appeal, 84-972 and 85-1531 were united as they should be.

RESPONDENT MISCONCEIVES THE PETITION OF WRIT OF CERTIORARI

There are questions raised directed at 85-1531 which in fact directed the petition of writ of certiorari to be directed to the Fourth District Court of Appeal, State of Florida.

CONCLUSION

It should be clear that there is not one legal piece of evidence to sustain the respondents action. All evidence in the instant case is in favor of petitioners. The respondents have failed to truthfully refute any of the allegations set forth by the petitioners.

Therefore the writ of certiori should issue.

The petitioners pray this court will grant the petition on writ of certiorari.

Richard Kananen
Marilyn Kananen
Attorney's pro-se
7611 Alachua Street
Orlando, Florida 32822
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